

Application No. 10/696,515
AMENDMENT dated July 7, 2008
Reply to Office Action of January 10, 2008

REMARKS

After entry of the present amendment, claims 8-12 and 16-20 are pending. Claims 8-10 and 13-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Housez ("The Soy Dessert and Baking Book," 2001, pp. 183-185) (hereinafter "Housez"). Claims 11-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Housez.

Claim 8 has been amended to incorporate the teaching of dependent claim 13. Dependent claims 13-15 have been canceled. Applicants respectfully request reconsideration and allowance in light of the foregoing amendments and the following remarks herein.

Claim Rejections Under 35 U.S.C. § 102

Claims 8-10 and 13-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Housez.

The Applicants respectfully traverse the new rejection entered by the Examiner because the Housez reference does not teach or anticipate the present invention. The Office Action states if one was to follow the Housez reference, that "from [the] original 405ml (405g) starting mixture, 18 caramel candies are produced that weigh about 7.5 g apiece." It is unclear how the Examiner came to the conclusion that the resultant caramels would weigh 7.5 g each. It appears as though the Examiner may have simply added the weights of protein, carbohydrate, and fat "per carmel" at the bottom of page 183 of the Housez reference. Based on the combination of these three weights, the Examiner concludes that the caramel contains the "about 5 to about 20 percent fat" and "at least about 5 percent soy protein." However, we respectfully point out that this does not incorporate moisture content, or any other components, which would also contribute to the total weight of the product. While there will be some loss of moisture mass due to evaporation during the boiling of the ingredients, there is no teaching as to the final weight of the caramel Housez, merely the weight of some of the dietary components. The amount of moisture present in the caramel is essential in the

calculation of the final weight of the caramel. Without this information, it is impossible to determine the percent protein and fat present in the final product of Housez. Therefore, if the caramel in Housez weighs as little as 10.0g, which is likely when considering the entire weight of the product, not just the weight of the dietary components, the Housez reference would not supply the at least about 5 percent soy protein claimed in the present invention and furthermore, may not encompass the claimed about 5 to about 20 percent fat content either.

Additionally, in view of the present amendment, the ranges claims do not overlap with the recipe taught in the Housez reference. Specifically, Housez teaches the use of 250 mL of vanilla soy milk (61.7 percent of the total ingredients) and 15 mL of butter (fat) (3.7 percent of the total ingredients), both of which are outside the ranges taught in the present invention. As presently claimed in independent claim 8, the aqueous composition teaches the soy and fat components at about 10 to about 40 percent and about 8 to about 10 percent, respectively. Since the Housez reference does not teach all of the elements of the present invention, the Applicants respectfully request that the novelty rejection be withdrawn and that the claims again be passed to allowance.

Claim Rejections Under 35 U.S.C. § 103

Claims 11-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Housez.

The Office Action correctly states that it is well known in the art to coat candy with chocolate. Claims 11 and 12 are dependent on independent claim 8, which has been previously shown to be novel. Thus, claims 11 and 12 are also novel and unobvious.

Application No. 10/696,515
AMENDMENT dated July 7, 2008
Reply to Office Action of January 10, 2008

Conclusion

Applicants respectfully request entry of the present amendment, reconsideration and withdrawal of the rejections to remaining claims 8-12 and 16-20, and allowance of this application.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

Dated: July 7, 2008

/Eric D. Misfeldt/
Eric D. Misfeldt
Registration No. 59,527

120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone (312) 577-7000
Facsimile (312) 577-7007
512520